

# Report for Congress

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## **Border Security: Immigration Issues in the 108<sup>th</sup> Congress**

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# Border Security: Immigration Issues in the 108<sup>th</sup> Congress

## Summary

Enhancing border security has emerged as a significant policy issue after the September 11, 2001 terrorist attacks. Prior to the terrorist attacks, the priorities for border security policy were beginning to shift from immigration-related issues to issues related to facilitating legitimate cross-border commerce. Several bills have been introduced in the 108<sup>th</sup> Congress (S. 539/H.R. 1096 and S. 6) that would authorize funding for increased personnel and technological improvements. S. 539/H.R. 1096 would require ongoing training for immigration personnel on how to use the new technology, an update of a port infrastructure assessment study, and demonstration projects on new technology at ports of entry, among other things. Another piece of legislation (H.R. 853) would establish a northern border coordinator within the Directorate of Border and Transportation Security in the Department of Homeland Security, among other things. The northern border coordinator would serve as a liaison to the Canadian government on border security-related issues.

Although the 107<sup>th</sup> Congress enacted several pieces of legislation that dealt with enhancing immigration-related border security, legislation to strengthen the nation's borders had been enacted as early as the 104<sup>th</sup> Congress. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA; P.L. 104-208) contained several immigration-related border security provisions that addressed illegal immigration and the smuggling of humans into the United States through the southwest border. IIRIRA also contained a provision that required the electronic tracking of every alien arriving in and departing from the United States. The deadline for implementing the electronic tracking system, commonly referred to as the entry and exit data system, was moved back in subsequent legislation. The terrorist attacks of September 11, 2001, however, prompted Congress to speed up implementation of the entry and exit data system as well as enact new provisions aimed at enhancing border security.

In the months following the terrorist attacks, Congress passed several pieces of legislation intended to enhance border security such as the USA PATRIOT Act (P.L. 107-56) and the Enhanced Border Security and Visa Entry Reform Act of 2002 (P.L. 107-173). In addition to legislation aimed at enhancing border security, the 107<sup>th</sup> Congress also enacted legislation that created a department specifically for securing the homeland. The Homeland Security Act of 2002 (P.L. 107-296) consolidates several agencies responsible for border security, including INS' enforcement functions, into a new Department of Homeland Security.

This report provides background information on the main immigration-related border security issues that have been raised as a result of the terrorist attacks and resulting concern for homeland security. It describes enacted legislation in the 107<sup>th</sup> Congress as well as in previous Congresses that focus on immigration-related border security issues. The report also poses possible immigration-related border security issues the 108<sup>th</sup> Congress may consider. This report will be updated to reflect any additional related legislation in the 108<sup>th</sup> Congress, as well as implementation issues.

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# Border Security: Immigration Issues in the 108<sup>th</sup> Congress

## Latest Legislative Developments

Legislation has been introduced (S. 539/H.R. 1096 and S. 6) that would authorize funding for increased personnel and technological improvements. The legislation (S. 539/H.R. 1096) would require ongoing training for immigration personnel on how to use the new technology, an update of a port infrastructure assessment study, and demonstration projects on new technology at ports of entry. The bills have been referred to the appropriate committees and no further action has been taken. Another piece of legislation (H.R. 853) would establish a northern border coordinator within the Directorate of Border and Transportation Security in the Department of Homeland Security, among other things. The northern border coordinator would serve as a liaison to the Canadian government on border security-related issues. The bill was referred to the appropriate committees and no further action has been taken.

## Introduction

Enhancing border security has emerged as a significant policy issue after the September 11, 2001 terrorist attacks. Several pieces of legislation were enacted in the 107<sup>th</sup> Congress that enhanced border security such as the USA PATRIOT Act (P.L. 107-56) and the Enhanced Border Security and Visa Entry Reform Act of 2002 (P.L. 107-173). The 108<sup>th</sup> Congress may address several issues pertaining to border security that may include authorizing funding to increase personnel and improving infrastructure and technology at the border and ports of entry.

In addition to enacted legislation aimed at enhancing border security, the 107<sup>th</sup> Congress enacted legislation that created a department specifically for securing the homeland. The Homeland Security Act of 2002 (P.L. 107-296) consolidated some border security agencies, including the border patrol and inspections activities of the former Immigration and Naturalization Service (INS), into a newly created Department of Homeland Security (DHS). Along with the border patrol and immigration inspection activities, the Act also transferred INS' interior investigations and detention and removal activities to the new DHS.<sup>1</sup> The border patrol and immigration inspection activities have traditionally focused on stemming illegal entry into the country, while facilitating legitimate travel, and with the emphasis now on

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<sup>1</sup> See CRS Report RL31560, *Homeland Security Proposals: Issues Regarding Transfer of Immigration Agencies and Functions*, by Lisa M. Seghetti and Ruth Ellen Wasem.

homeland security it is unlikely that the focus will change. Some view the Act, however, as indicative of a fundamental shift Congress has taken with respect to the way in which it views immigration policy, in particular border security.

Prior to enactment of P.L. 107-296, efforts had been underway in the Department of Justice (DOJ) to restructure the former INS. These efforts were centered on splitting the two functions — immigrant service and immigration enforcement (that included the border patrol and inspection activities) but keeping them in the same agency.<sup>2</sup> The Homeland Security Act of 2002, however, splits the two functions and places the immigration enforcement function, including immigration inspections and the border patrol, in a Bureau of Border Security under a Directorate of Border and Transportation Security with other agencies that perform similar functions. An Administration reorganization, however, placed the border patrol and immigration inspections function, along with Customs inspections, into a Bureau of Customs and Border Protection under a Directorate of Border and Transportation Security; the immigration interior enforcement function, along with Customs enforcement, is in a Bureau of Immigration and Customs Enforcement under the Directorate of Border and Transportation Security.

## Background

There are two arms of the federal government charged with immigration related border security: the border patrol and immigration inspectors.<sup>3</sup> The United States Border Patrol enforces immigration law as well as some aspects of the criminal law along the border and between ports of entry. Immigration inspectors are stationed at United States ports of entry and examine and verify U.S. citizens and foreign nationals who seek admission to the United States.

Over the years the United States borders and land ports of entry have seen a rise in aliens using fraudulent documents to gain entry into the United States. There has also been an increase in aliens illegally crossing into the country, while lawful aliens and residents of the United States have witnessed longer delays at land ports of entry. Although there has been a longstanding concern to better track aliens coming into and departing the country, some contend that the need for an automated tracking system is more apparent, especially due to the potential for terrorists to sneak into the country. The following issues have concerned lawmakers for years and have been the subject of recent law, as discussed in the legislation section.

- the use of fraudulent documents,
- aliens illegally crossing into the United States,
- long delays at land ports of entry, and
- a need for an entry and exit data system.

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<sup>2</sup> See CRS Report RL31388, *Immigration and Naturalization Service: Restructuring Proposals in the 107<sup>th</sup> Congress*, by Lisa M. Seghetti.

<sup>3</sup> Border security, however, begins at the consular posts overseas with the issuance of visas.

## Bi-National Cooperation

The United States and Canadian governments signed a declaration establishing a “smart-border” on December 12, 2001. The declaration included a 30-point plan to secure the border and facilitate the flow of low-risk travelers and goods through the following:

- coordinated law enforcement operations;
- intelligence sharing;
- infrastructure improvements;
- the improvement of compatible immigration databases;
- visa policy coordination;
- common biometric identifiers in certain documentation;
- prescreening of air passengers;
- joint passenger analysis units; and
- improved processing of refugee and asylum claims, among other things.

Previously, on December 3, 2001 the two countries signed a joint statement of cooperation on border security and migration that focused on detection and prosecution of security threats, the disruption of illegal migration, and the efficient management of legitimate travel.<sup>4</sup>

With respect to the southwest border, in March 2002 the United States and Mexico announced a partnership to create a new, technologically advanced border to assure tighter security while facilitating legitimate travel. The U.S.-Mexico Border Partnership Action Plan calls for greater cooperation between the two governments in order to better secure border infrastructure and facilitate the flow of people and goods between the countries. The plan also calls for the development of integrated computer databases between the two countries and express lanes at high volume ports of entry for frequent, pre-cleared low-risk travelers.<sup>5</sup>

## Legislation Enacted in Previous Congresses

**Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).** Congress began addressing the need for greater border security in the 104<sup>th</sup> Congress when it passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA; Division C of the Omnibus Consolidated Appropriations Act for FY1997; P.L. 104-208).<sup>6</sup> IIRIRA’s border security provisions

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<sup>4</sup> For further information on U.S.-Canada border relations see CRS Report RS21258, *Border Security: U.S.-Canada Border Issues*, by Lisa M. Seghetti.

<sup>5</sup> See [<http://www.whitehouse.gov/infocus/usmxborder/22points.html>].

<sup>6</sup> Prior to the enactment of IIRIRA, Congress, in Title XIII, §13006 of the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322), authorized appropriations for FY1995-FY1998 to increase the resources for INS’ border patrol, inspections and deportation programs with respect to apprehending illegal aliens. The Act also authorized  
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were concentrated at the southwest border and increased border enforcement by authorizing the hiring of 1,000 new border patrol agents each year for FY1997 through FY2001. The Act called for the deployment of additional border patrol agents to areas that were in proportion to the level of illegal crossings. The Act also required an increase in border patrol support personnel by 300 a year for FY1997 through FY2001.

IIRIRA sought to facilitate legitimate travel to the United States by addressing the long delays at the ports of entry by authorizing the hiring of inspectors to a level adequate to assure full staffing during peak crossing hours for FY1997 and FY1998. The Act also authorized the Attorney General to establish six inspection projects wherein a fee can be charged. Under the Act, the projects could be dedicated commuter lanes at ports of entry that would facilitate the speedy passage of frequent border crossers.<sup>7</sup> IIRIRA also established six preinspection stations at foreign airports.

In an effort to stem illegal immigration, IIRIRA authorized the expansion of border barriers and authorized the Attorney General to acquire and use any federal equipment that was available for transfer in order to detect, interdict and reduce illegal immigration into the United States. It also authorized appropriations to expand the Automated Biometric Fingerprint Identification System (commonly referred to as IDENT) nationwide to include the fingerprints of illegal or criminal aliens who were apprehended.

IIRIRA amended the Immigration and Nationality Act (INA) by requiring border crossing cards to have a biometric identifier that is machine readable. The Act required that the biometric identifier must match the biometric characteristic of the card holder in order for the alien to enter the United States.

In addition to the immigration-related border security provisions, IIRIRA had a number of reporting requirements that pertained to border security including requirements that: (1) the Comptroller General track, monitor and evaluate the Attorney General's strategy to deter illegal immigration and report to Congress annually until 2003; (2) the Attorney General report to Congress on the joint initiative to develop a plan with respect to transitioning to an automated data collection system at ports of entry; and (3) the Attorney General report to Congress on a final plan to redeploy border patrol personnel from interior locations in the country to the border areas.

**Automated Entry/Exit System (US-VISIT).** Section 110 of IIRIRA required the Attorney General to develop an automated data system to record the entry and exit of every alien arriving in and departing from the United States by September 30, 1998. Many expressed concern about the potential for such a system

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<sup>6</sup> (...continued)

appropriations to increase the number of border patrol agents by not less than 1,000 per year for FY1995-FY1998.

<sup>7</sup> See CRS Report RS21335, *The Immigration and Naturalization Service's Port Passenger Accelerated Service System*, by Lisa M. Seghetti.

to cause long delays at ports of entry. Consequently, Congress amended §110 of IIRIRA in the FY1999 Omnibus Consolidated Appropriations Act (P.L. 105-277) by extending the deadline for the implementation of an automated entry and exit data system and by prohibiting significant disruption of trade, tourism, or other legitimate cross-border traffic once the data system was in place. And in June 2000, Congress further amended §110 in the INS Data Management and Improvement Act of 2000 (P.L. 106-215) by delaying the immediate implementation of the automated entry and exit data system at all ports of entry and requiring the development of a data system that uses available data to record alien arrivals and departures, without establishing additional documentary requirements. Following the September 11, 2001 terrorist attacks, however, Congress requested that resources be directed to the immediate development and implementation of an automated entry and exit control system at all ports of entry.

On May 19, 2003, Asa Hutchinson, Under Secretary of the Border and Transportation Security Division in the Department of Homeland Security (DHS), announced the Administration's intent to implement the United States Visitor and Immigration Status Indicator Technology (U.S.-VISIT) program, which was previously referred to as the automated entry/exit system. According to the Under Secretary, DHS expects to meet the deadline for implementing the US-VISIT program at the nation's airports and seaports. The deadlines for implement the US-VISIT program at high-traffic land ports of entry is December 31, 2004 and for all other ports of entry, December 31, 2005.<sup>8</sup>

## Legislation Enacted in the 107<sup>th</sup> Congress

**Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) of 2001 (P.L. 107-56).** The USA PATRIOT Act advances a requirement set forth in IIRIRA and a subsequent Act<sup>9</sup> by stating that it is the sense of Congress that the implementation of an integrated entry and exit data system be expedited, and that the Entry and Exit Data System Task Force be immediately established.<sup>10</sup> With respect to the entry and exit data system, the Act requires it to interface with federal law enforcement systems and authorizes appropriations to fully implement the system.

The Act requires the Attorney General and the Secretary of State, through the National Institute of Standards and Technology (NIST), to develop and certify a technology standard that can be used to verify the identity of persons seeking a visa

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<sup>8</sup> See P.L. 106-215.

<sup>9</sup> Immigration and Naturalization Service Data Management Improvement Act of 2000 (P.L. 106-215).

<sup>10</sup> The Entry and Exit Data System Task Force is charged with evaluating how the Attorney General can efficiently and effectively implement the entry and exit data system. It is also charged with evaluating how the United States can improve the flow of traffic at its ports of entry through cooperation between the public and private sectors as well as among other agencies; enhance systems for data collection and data sharing; and modify different information technology systems. The task force is also required to evaluate the cost of implementing each of its recommendations.



to enter the United States.<sup>11</sup> With respect to developing and certifying a technology standard, the Act also requires the Attorney General and the Secretary of State to consult with the Secretary of Treasury and other federal law enforcement and intelligence agencies that the Attorney General or the Secretary of State (in consultation with Congress) deems appropriate. It requires the technology standard that is developed be a “cross-agency, cross-platform electronic system” that is fully integrated with other federal law enforcement and intelligence agencies’ databases. It also requires the technology standard to be accessible to all consular officers who are responsible for issuing visas; all federal inspection agents at U.S. ports of entry; and all law enforcement and intelligence officers who are determined by regulations to be responsible for investigating or identifying aliens admitted to the United States through a visa.

The Act authorizes appropriations to triple the number of border patrol agents and immigration inspectors at the northern border. The Act also authorizes \$50 million in appropriations to INS to improve technology for monitoring the northern border. In an effort to prevent terrorists from entering the United States, the Act authorizes the Secretary of State to share visa and lookout data with foreign governments. It requires the Attorney General and the Director of the FBI to share data from domestic criminal record databases with the Secretary of State for the purpose of adjudicating visa applications.

In addition to the immigration-related border security provisions, the USA PATRIOT Act has a reporting requirement that mandates the Attorney General and the Secretary of State, jointly in consultation with the Secretary of Treasury, to submit a report to Congress that describes the development, implementation, efficacy and privacy implications of the technology standard and database system.<sup>12</sup> The Act also requires the Attorney General to report to Congress on the feasibility of enhancing the FBI’s Integrated Automated Fingerprint Identification System (IAFIS) and other identification systems used for identifying individuals in an effort to better identify foreign nationals who may be seeking entry into the United States and are wanted in connection with a criminal investigation in the United States or abroad.<sup>13</sup>

**The Enhanced Border Security and Visa Entry Reform Act of 2002 (P.L. 107-173).** The Enhanced Border Security and Visa Entry Reform Act of 2002 further advances requirements set forth in IIRIRA by requiring the Attorney General to implement an integrated entry and exit data system. In developing the entry and exit data system, the Act requires that a technology standard be funded and implemented. The Act also requires the entry and exit data system to be interoperable with other databases with respect to making alien admissibility determinations. With respect to border crossing cards, the Act extended until September 30, 2002 the deadline for border crossing identification cards to contain

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<sup>11</sup> Such as a biometric identifier that is unique to the individual.

<sup>12</sup> The Act set an April 26, 2003 (18 months after enactment) deadline, and every 2 years thereafter, for the report to be submitted to Congress. P.L. 107-173, however, amended the USA PATRIOT Act by setting an Oct. 26, 2002 (1 year after enactment) deadline.

<sup>13</sup> The Act authorizes appropriations to enhance IAFIS and other identification systems.

a biometric identifier that matches the biometric characteristic of the card holder.<sup>14</sup> The Act authorizes appropriations to develop and implement the entry and exit system.

The Act requires the Attorney General and the Secretary of State to issue machine-readable, tamper-resistant visas and travel documents that have biometric identifiers by October 26, 2004. It also requires the installation of biometric identifier readers and scanners at all ports of entry by October 26, 2004. The Act requires that the biometric data readers and scanners be accurate according to domestic and international standards and that they be able to authenticate documents. The Act authorizes appropriations to deploy the necessary equipment at the ports of entry to read and scan the new travel documents.

The Act requires the Attorney General to increase the number of INS inspectors and support staff, and INS investigators and support staff by 200 per group over the number that was authorized in P.L. 107-56 for each fiscal year from FY2002 through FY2006. The Act authorizes appropriations for DOJ to increase the annual rate of basic pay for journeyman border patrol agents, INS inspectors, inspections assistants and support staff.<sup>15</sup> It also authorizes appropriations for personnel training and increased resources for INS and Consular Affairs. The Act expands the Carrier Consultant Program by assigning additional immigration officers to assist air carriers in detecting fraudulent documents at foreign airports.

With respect to technological and infrastructure improvements to enhance border security, the Act authorizes \$150 million in appropriations. It also authorizes appropriations for INS (and DOS) to improve and expand its personnel facilities. It permits federal agencies involved in border security to waive all or part of its enrollment fees for technology based programs in order to encourage participation in the programs. To offset the costs of waiving enrollment fees for technology based programs, the Act permits an increase in land border fees, if reasonable, for the issuance of arrival and departure documents.<sup>16</sup>

The Act addresses the need for increased interagency data sharing pertaining to the admissibility and removability of aliens by requiring the development and implementation of an interoperable electronic data system that provides real time access to federal law enforcement and the intelligence community databases.<sup>17</sup> With respect to the interoperable electronic data system, the Act requires the development of a technology standard that can be used to verify the identity of aliens. While the interoperable electronic data system is being developed, the Act requires that federal law enforcement agencies and the intelligence community share information with

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<sup>14</sup> The Sept. 30, 2002 deadline was met.

<sup>15</sup> For journeyman border patrol agents and inspectors, the Act authorizes the necessary appropriations to increase the grade level of such personnel (after meeting specified requirements) from a GS-9 to a GS-11; and for inspections assistants, from GS-5 to a GS-7.

<sup>16</sup> INS collects fees for programs that enhance immigration inspection. See [<http://www.ins.usdoj.gov/graphics/aboutins/budget/INSAccounts.htm>].

<sup>17</sup> The interoperable data system is also known as Chimera.

INS (and DOS) pertaining to the admissibility of aliens. To assure that the relevant information is being shared, the Act requires that a report be submitted to Congress that identifies the information needed by INS and DOS. Once the report is completed, the Act requires a coordination plan to be developed that is based on the report's findings.

The Act requires that the interoperable electronic data system have the capacity to compensate for disparate name formats among the various databases; and be able to search names that are linguistically sensitive. It requires linguistically sensitive algorithms to be implemented for at least four languages designated as high priorities by the Secretary of State.<sup>18</sup> The Act required the President to establish a Commission by October 26, 2002 to oversee the development and progress of the interoperable data system. It authorizes appropriations to develop and implement the interoperable data system.

With regard to the admission of aliens, the Act requires airline carriers to provide the Attorney General with electronic passenger manifests before arriving in or departing from the United States and repeals a provision that requires airport inspections to be completed within 45 minutes of arrival. It requires a study to examine the feasibility of establishing a "North American Perimeter Security" program that would provide for increased cooperation with foreign governments on questions related to border security. In addition to the study, the Act permits border inspections agencies, including the immigration inspection agency, to conduct joint U.S.-Canada inspections projects along the shared border.

The Act also has several provisions that increase the monitoring of foreign students, including a requirement that the Attorney General establish an electronic means (i.e., database) to monitor foreign students. Additionally, the Act requires the electronic system be able to verify the legitimacy of the documentation that accepts the foreign student to the specified approved institution.<sup>19</sup>

The Act has several reporting provisions that required:

- the President to submit a report to Congress by September 14, 2002 that identifies federal law enforcement and intelligence information needed by the Department of State or INS for visa or admission (into the country) eligibility;
- the President to develop and implement a plan by May 14, 2003 that requires federal law enforcement agencies and the intelligence community to provide to DOS and INS information identified by the agencies;<sup>20</sup>

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<sup>18</sup> The Act also required that an additional language algorithm be implemented annually for 3 years following the implementation of the highest priority languages.

<sup>19</sup> See CRS Report RL31146, *Foreign Students in the United States: Policies and Legislation*, by Ruth Ellen Wasem.

<sup>20</sup> The Act requires federal law enforcement agencies and the intelligence community to share information that may be relevant to the admissibility and deportability of aliens during  
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- the President to submit an interim report to Congress by November 14, 2002 on the progress of implementation of the interoperable data system;
- the Commission on Interoperable Data Sharing to submit an annual report to Congress on its findings and recommendations;
- the Attorney General, Secretary of State and NIST to jointly submit a report to Congress that assesses the actions necessary, and the considerations to be taken into account (including cost), to fully achieve by October 26, 2004 the implementation of biometric identifiable, machine-readable, tamper-resistant travel documents and the installation of equipment and software at all U.S. ports of entry that reads and authenticates the biometric identifiable documents; and
- the Attorney General and the Secretary of the Treasury to submit a report to Congress on the joint U.S.-Canada inspections projects.

**The Homeland Security Act of 2002 (P.L. 107-296).** The Homeland Security Act of 2002 abolishes INS and transfers its immigration enforcement function (such as border patrol, INS inspections, detention and removal, and interior enforcement) to a newly created Bureau of Border Security under a Directorate of Border and Transportation Security in DHS.<sup>21</sup> The Act creates an Assistant Secretary of the Bureau of Border Security who will be in charge of the Bureau and will report directly to the Under Secretary for Border and Transportation Security.<sup>22</sup>

The Act creates a Chief of Policy and Strategy for the Bureau who will be responsible for making policy recommendations and conducting research and analysis on immigration enforcement issues. The Chief of Policy and Strategy will also coordinate immigration policy issues with his counterpart in the Bureau of Citizenship and Immigration Services. The Act also creates a Legal Advisor position for the Bureau who will provide legal advice to the Assistant Secretary of the Bureau of Border Security and represent the Bureau in all exclusion, deportation and removal proceedings.

With respect to the Bureau of Border Security, the Act requires the Secretary of DHS to report to Congress no later than 1 year after being sworn into office on how the Bureau will “comprehensively, effectively, and fairly” enforce the provisions in the INA that pertain to the enforcement function. It also advances a requirement set

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<sup>20</sup> (...continued)

the interim while the plan is being implemented.

<sup>21</sup> The Act transfers INS’ immigration service function to DHS in a Bureau of Citizenship and Immigration Services.

<sup>22</sup> In addition to INS’ enforcement function, the Act transfers other agencies responsible for border security to the new Department, see CRS Report RL31549, *Department of Homeland Security: Consolidation of Border and Transportation Security Agencies*, William J. Krouse, Coordinator.

forth in IIRIRA by stating that it is the sense of Congress that the completion of the 14-mile border fence project should be a priority for the Secretary of DHS.<sup>23</sup>

**The Administration's Reorganization.** Under the Administration's reorganization, the Bureau of Border Security, along with the Customs Service and other functions, was separated into two new Bureaus: the Bureau of Immigration and Customs Enforcement and the Bureau of Customs and Border Protection. The Bureau of Customs and Border Protection includes the Customs Service's inspection function, INS border patrol and inspections functions, and the agricultural inspections function of the Agricultural Quarantine Inspection program. The immigration-related functions make up the largest portion of this new Bureau.<sup>24</sup> The Bureau of Immigration and Customs Enforcement includes the Custom's Service interior enforcement program; the Federal Protective Service; and the former INS' investigations, detention and removal, and the intelligence functions. The Plan took effect on March 1, 2003.

**Summary of Enacted Legislation.** The three main immigration-related pieces of border security legislation enacted in the 107<sup>th</sup> Congress sought to strengthen the nation's borders and ports of entry by one or more of the following means:

- requiring the hiring of additional personnel;
- authorizing funding for training personnel;
- increasing the pay rate of certain personnel;
- requiring the development of technology to track the entry and exit of foreign nationals;
- requiring INS and other border security-related agencies' databases to be integrated;
- authorizing funding to improve technology;
- requiring travel documents to be tamper resistant and have a biometric identifier that is unique to the card holder;
- requiring the installation of biometric identifier readers and scanners at ports of entry;
- requiring electronic passenger manifests before arriving in or departing from the United States via an airline carrier;
- requiring the establishment of electronic means to monitor foreign students; and
- creating a Department of Homeland Security that includes INS' enforcement and service functions.

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<sup>23</sup> The 14-mile border fence project was first authorized in IIRIRA and included the construction of fencing along the United States-Mexico international border that starts at the Pacific Ocean and extends eastward.

<sup>24</sup> The Bush Administration Reorganization Plan dated January 30, 2003, which establishes this DHS Bureau, includes supportive documents indicating that the former INS border patrol and immigration inspections portion account for 53% of the Bureau's funding in FY2003.

## Legislation in the 108<sup>th</sup> Congress

### **The Border Infrastructure and Technology Modernization Act (S. 539/H.R. 1096); Comprehensive Homeland Security Act of 2003 (S. 6).**

Several pieces of legislation have been introduced in the 108<sup>th</sup> Congress (the Border Infrastructure and Technology Modernization Act, S. 539/H.R. 1096; and the Comprehensive Homeland Security Act of 2003, S. 6) that would authorize funding for increased personnel and technological improvements. S. 539/H.R. 1096 would also require the following: (1) ongoing training for immigration inspectors and investigators on how to use the new technology; (2) an update of a port infrastructure assessment study and the implementation of the contents of the study; (3) demonstration projects on new technology at ports of entry; and (4) a National Land Border Security Plan that would include vulnerability assessments of ports of entry along the northern border, among other things. S. 539/H.R.1096 would authorize funding to carry out the mandates. S. 6 would require the former INS and the Bureau of Border Security to make technological improvements related to border security and improve and expand programs that facilitate the flow of travel and commerce. All of the bills have been referred to the appropriate committees and no further action has been taken.

**H.R. 853.** Another piece of legislation (a bill that would “establish the position of Northern Border Coordinator in the Department of Homeland Security,” H.R. 853) would establish a northern border coordinator within the Directorate of Border and Transportation Security in the Department of Homeland Security, among other things. The northern border coordinator would serve as a liaison to the Canadian government on border security-related issues. The bill has been referred to the appropriate committees and no further action has been taken.

## Issues in the 108<sup>th</sup> Congress

**Technology and Biometric Identifiers in Travel Documents.** The mandate by Congress to issue to aliens visas and other travel documents that have biometric identifiers and to have the necessary equipment at the ports of entry to scan and read the documents is paramount to border security. Some contend, however, that in order to fully achieve border security the neighboring countries (Canada and Mexico) should implement similar requirements. The Canadian government has fast tracked the implementation of a machine-readable, permanent fraud-resistant resident card for new immigrants; and according to the Smart Border Declaration, both countries have agreed to develop common standards for the biometrics and use compatible technology to read the biometrics.

The United States and Mexican governments entered into a partnership (the U.S.-Mexico Border Partnership Action Plan) that seeks to enhance cooperation between the two governments. Although the partnership emphasizes enhancing technology and infrastructure at the border, it does not call for the Mexican government to implement similar biometric standards or compatible technology to read the documents that contain a biometric identifier. Some contend that by not

attending to biometric identifiers, Mexico could become a means for terrorists to sneak into the United States.

**Infrastructure Needs at the Border.** The requirement of an automated entry and exit data system (US-VISIT program) at all ports of entry that will record the arrivals and departures of every alien entering and exiting the country is being implemented. Some critics contend that the implementation of the system will interfere with commerce as it may slow traffic at ports of entry. Proponents of the system, however, contend that by tracking the arrival and departure of foreign nationals will better secure the country. Many maintain that the successful development of an automated entry and exit data system may require the United States and its neighbors (Canada and Mexico) to expand infrastructure at the border. Critics contend that the current infrastructure at U.S. ports of entry is not sufficient to accommodate the demands of an entry and exit data system. For example, additional lanes may be necessary at some ports of entry to accommodate the number of individuals seeking entry into the United States who will need to be processed through the system. Moreover, in order to record the departure of every alien who leaves the United States, there needs to be a “port of exit” that has sufficient lanes, staff and resources. Currently, there is not such a system. The sending or receiving countries (i.e., Canada and Mexico) may not have the same number of lanes or the necessary infrastructure to create additional lanes that would accommodate the amount of traffic entering and leaving the country via a United States port of entry. Some contend that this could lead to significant delays as aliens try to make their way through ports of entry.

**Staffing Needs at the Border.**<sup>25</sup> Prior to the terrorist attacks, several northern ports of entry were not staffed 24 hours.<sup>26</sup> Moreover, many observers maintain that historically the northern border had been understaffed and lacked the necessary infrastructure to adequately screen individuals seeking entry into the United States. At an October 3, 2001 Senate hearing on Northern Border Security, officials from the former INS testified that they had 334 border patrol agents and 498 inspectors assigned to the northern border compared to over 9,500 border patrol

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<sup>25</sup> For additional information on immigration-related border security issues at the northern border, see CRS Report *Border Security: U.S.-Canada Immigration Border Issues*, by Lisa M. Seghetti.

<sup>26</sup> Prior to Sept. 11, 2001, the former INS and the U.S. Customs Service used the Remote Video Inspection System (RVIS) to extend operations at non-24 hour ports of entry. RVIS was designed to enhance security, enforcement and service along low-volume, small, rural northern ports of entry. Each RVIS site is equipped with video cameras, card readers, sensors, two-way communications equipment, and a Terminal Device for the Deaf to transmit images of the travelers, the vehicle, and the contents in the vehicle to the inspector. RVIS also allows the inspector to communicate with the travelers over a two-way communications device, review travel documents, and observe the physical area surrounding the port of entry. RVIS was suspended as a result of the Sept. 11, 2001 terrorist attacks and has not been reinstated, and the sites that had RVIS have been required to be staffed 24 hours.

agents and inspectors assigned to the geographically smaller southern border.<sup>27</sup> Moreover, a DOJ Office of Inspector General (OIG) report highlighted deficiencies with the border patrol along the northern border.<sup>28</sup> Among other things, the OIG report asserted that “the border patrol faced significant enforcement challenges along the northern border and was unable to adequately respond to illegal activity, primarily because of a lack of sufficient staff and resources.”<sup>29</sup> Contrary to the staffing levels at the northern border, over the years the southwest border has received more resources, primarily due to its longstanding history of illegal immigrants attempting to gain entry into the United States and individuals attempting to smuggle human beings and drugs into the country.<sup>30</sup>

Congress has taken action to address the perceived lack of resources at the northern border by passing several pieces of legislation (see above discussion on legislation in the 107<sup>th</sup> Congress). The 108<sup>th</sup> Congress may consider legislation that would authorize additional funding to increase immigration personnel at the border

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<sup>27</sup> Senate Hearing, *Northern Border Security*, 107<sup>th</sup> Cong., 1<sup>st</sup> Sess., Oct. 3, Dec. 5, 2001.

<sup>28</sup> U.S. Department of Justice, Office of Inspector General (OIG): *Follow-Up Report on the Border Patrol's Efforts to Improve Northern Border Security*, OIG report I-2002-004.

<sup>29</sup> *Ibid.*

<sup>30</sup> The amount of resources allocated to the southwest border was evident in past Commerce-Justice-State appropriations bills wherein specific amounts were allocated to various operations that were being conducted at the southwest border as well as to the construction of physical barriers along the southwest border.